



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Allied-Signal, Inc.

File: B-243555

Date: May 14, 1991

Karen F. Botterud, Esq., for the protester,
John S. Pachter, Esq., and Jonathan D. Shaffer, Esq., Smith,
Pachter, McWhorter & D'Ambrosio for Hughes Aircraft Company,
the interested party.

Catherine M. Evans, Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Protest alleging that contract modification constitutes improper sole-source award to incumbent contractor is dismissed as untimely where protester knew more than 10 days prior to filing its protest of agency's intent to modify existing contract instead of holding competition for new requirement, and elected to pursue the matter with agency's competition advocate instead of filing a protest.

DECISION

Allied-Signal, Inc. protests the modification of contract No. F33657-89-C-2133, awarded by the Department of the Air Force to Hughes Aircraft Company for systems integration of Maverick and Hellfire missiles, to include development of test equipment for Hellfire missiles. Allied-Signal alleges that the modification is outside the scope of the original contract, and thus constitutes an improper sole-source award to Hughes.

We dismiss the protest as untimely filed.

The record indicates that on November 7, 1990, Allied-Signal submitted to Hughes a subcontractor proposal for the work contemplated under the proposed modification to Hughes' contract. On or about February 18, 1991, Hughes rejected Allied-Signal's proposal. Allied-Signal then contacted the Air Force on February 22 and stated that it was considering protesting the modification. On March 1, 1991, Allied-Signal's representatives met with the Air Force's Competition Advocate to complain about the proposed modification. The competition advocate stated that he would review the matter, and ultimately informed Allied-Signal on March 22 that the

Air Force would proceed with the modification. Allied-Signal therefore maintains that it learned of its basis for protest on March 22. Allied-Signal filed its protest on April 5, 10 working days after March 22.

Our Bid Protest Regulations require that protests not based upon alleged defects in a solicitation must be filed not later than 10 working days after the basis for protest is known or should have been known. 4 C.F.R. § 21.2(a)(2) (1991). Here, Allied-Signal knew of the Air Force's intent to modify Hughes' contract more than 5 months before the protest was filed. Instead of filing a protest with the contracting officer or our Office, Allied-Signal elected to pursue the matter with the agency's competition advocate. It is well-established that such attempts to persuade the agency to change its position do not toll our timeliness requirements. See American Productivity & Quality Center, B-242703, Jan. 18, 1991, 91-1 CPD ¶ 60. Allied-Signal's protest was filed more than 10 days after the basis for protest was known; it therefore is untimely and will not be considered.

The protest is dismissed.



John M. Melody
Assistant General Counsel